



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 3, 2012

CBCA 2696-TRAV

In the Matter of MICHAEL N. HEINZ

Michael N. Heinz, California, MD, Claimant.

Bonnie Petree, Head, Customer Service Division, Travel Department, Naval Air Warfare Center Aircraft Division, Patuxent River, MD, appearing for Department of Navy.

VERGILIO, Board Judge.

A civilian employee of the Department of Defense is to receive payment for reimbursable lodging and related expenses incurred on a temporary duty assignment. The claimant obtained the lodging near the airport upon return at 1:00 am local time, when the claimant could not safely make the approximately two hour drive to home after a cross-country flight.

The claimant, Michael N. Heinz, a civilian employee of the Department of Defense, requests reimbursement for lodging expenses incurred on August 27, 2011, near the arrival airport, upon return at approximately 1:00 am. Rather than drive nearly two hours to his residence, he stayed at a hotel, incurring costs of \$89.50 (\$81.18 for lodging and \$8.32 in occupancy taxes). The claimant had begun a temporary duty assignment on August 25. Although authorized to perform return travel on August 27, on August 26 the claimant completed temporary duty tasks and opted to depart on return cross-country travel (within the continental United States) in order to avoid predicted arrival airport closures resulting from a hurricane. On August 26, his flight departed at approximately 6:35 pm (eastern time) (3:35 pm local pacific time). Claimant arrived on August 27, at approximately 1:00 am. Upon arrival, the claimant was too tired to drive home safely; he secured lodging near the airport. The airport and hotel are not at claimant's permanent duty station--defined as the corporate limits of the city or town in which claimant is stationed. JTR App. A1.

The agency denied the claimed reimbursement based upon a clause in the Joint Travel Regulations (JTR), C4552-C.1.a, which states that per diem cannot be authorized or paid

within the permanent duty station limits, or at, or within the vicinity of, the place of abode (residence) from which the employee commutes daily to the official station (with an exception not here relevant).

The agency has permissively interpreted the actual language of the regulations, essentially deeming the airport and hotel to be within the vicinity of the claimant's residence. However, notwithstanding the language of the JTR, this Board has found circumstances when a claimant is to be reimbursed for lodging and related costs incurred within the vicinity of a permanent duty station or residence. In *Mark E. Byers*, CBCA 2371-TRAV, 11-1 BCA ¶ 34,763, weather conditions made it impossible for claimant to depart the vicinity of the arrival airport to reach home. (As a result of the decision, now the JTR recognizes that per diem in connection with transportation delays at the permanent duty station may be paid in certain extremely limited weather-related circumstances beyond the traveler's control after return to the permanent duty station vicinity from the temporary duty location. JTR 4552-C.2.c.) In *Diane M. Balderson*, CBCA 2416-TRAV, 11-2 BCA ¶ 34,801, the Board found entitlement to lodging costs based upon "a similar exception. Claimant had worked an eighteen-hour day before arriving at the PDS and faced a one and one-half hour drive in the early morning hours to her residence." Safety concerns created the entitlement.

In light of the developed case law, in the absence of more restrictive regulatory language, the claimant's travel authorization should be amended to include the lodging and related costs, and the claimant is entitled to recover the claimed \$89.50. Thus, the Board grants the claim.

JOSEPH A. VERGILIO
Board Judge